



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (517-364-9509) and FIRST CLASS MAIL

MAY 29 2012

Andrea L. Hansen, Esq.
Honigman Miller Schwartz and Cohn LLP
222 N. Washington Square, Suite 400
Lansing, MI 48933-1800

RE: MUR 6500
New Common School Foundation
Cornerstone Schools Association

Dear Ms. Hansen:

By letter dated September 29, 2011, the Federal Election Commission ("Commission") notified your clients, New Common School Foundation and Cornerstone Schools Association, of a complaint alleging that your clients violated certain aspects of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations. A copy of the complaint was provided at that time. By letter dated October 12, 2011, the Commission notified your clients of supplemental information provided by the complainant.

After reviewing the complaint, supplements, and your responses, the Commission, on May 22, 2012, found no reason to believe that New Common School Foundation and its Board members violated 2 U.S.C. § 441b(a) or 11 C.F.R. §§ 114.2(f)(1) and 300.61. The Commission also found no reason to believe that Cornerstone Schools Association violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.4.(c)(6)(i) and (ii). Accordingly, on May 22, 2012, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analyses, which explain the Commission's findings, are enclosed for your information.

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Andrea L. Hansen, Esq.
MUR 6500
Page 2

If you have any questions, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", with a stylized, flowing script.

Mark D. Shonkwiler
Assistant General Counsel

Enclosures
Factual and Legal Analyses

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6500

RESPONDENT: New Common School Foundation

I. INTRODUCTION

This matter was generated by a complaint filed by the Bill Beddoes. *See*

2 U.S.C. § 437(g)(a)(1). The matter involves allegations that a non-profit corporation, New Common School Foundation ("NCSF"), made a prohibited in-kind contribution to The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer ("Committee"), the principal campaign committee for U.S. Senate candidate W. Clark Durant. Durant is the current President and a Board of Director member of NCSF.

The complaints (original, amended, and second amended) allege that NCSF violated 2 U.S.C. § 441b(a) by making a prohibited in-kind corporate contribution as a result of NCSF's payment for legal advice regarding any possible conflict of interest arising from Durant being a candidate while continuing to be an NCSF officer. Complainant also alleges that the NCSF Board, of which Durant is a member, violated the prohibition on corporate facilitation of contributions under 11 C.F.R. § 114.2(f)(1) when it directed its lawyers to research possible conflict of interest issues that might arise as a result of Durant's candidacy. Respondent was notified of the complaint and amendments and denies the allegations.

For the reasons discussed below, the Commission finds no reason to believe that NCSF violated the Act.

1 **II. FACTUAL BACKGROUND**

2 NCSF is a Michigan non-profit corporation whose stated primary purpose is to “explore
3 educational methodologies that enhance performance throughout the public educational system.”
4 NCSF and Cornerstone Schools Association Joint Response (“Joint Response”) at 2. Durant is
5 the current President of NCSF and serves on its Board of Directors. *Id.* The complaint alleges
6 that NCSF paid for legal services for the benefit of Durant’s campaign. *See* Original Complaint
7 at 1. This allegation is based on an August 22, 2011 newspaper article in which Durant was
8 quoted as stating that the NCSF would consult with its legal counsel to ensure that there was no
9 conflict between Durant’s continued presidency of NCSF and his Senate candidacy. *See Id.* at 5,
10 Ex. C. In their respective responses to the complaints, both NCSF and Clark Durant’s campaign
11 deny such an arrangement. NCSF clarified that it asked its own counsel to research whether the
12 organization could continue to compensate Durant once he announced his candidacy. *See* Joint
13 Response at 3. The Durant campaign stated that Durant personally retained and paid for the
14 legal services of a law firm different from the one retained by NCSF to advise him on his legal
15 obligations as a candidate. *See* Committee Response at 2. Complainant asks the Commission to
16 “investigate NCSF’s apparent prohibited in-kind contributions to Durant and the Committee, and
17 the role NCSF’s Board of Directors played in facilitating such a contribution.” *Second Amended*
18 Complaint at 6.

19 **III. LEGAL ANALYSIS**

20 The Act prohibits corporations from making contributions in connection with a federal
21 election. 2 U.S.C. § 441b(a). Contributions include any direct or indirect payment, distribution,
22 loan, advance, deposit or gift of money, or any services, or anything of value to any candidate or
23 campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2). In-kind

1 contributions must be reported pursuant to 2 U.S.C. § 434(b). The corporate ban on
2 contributions to federal candidates also includes in-kind contributions. 11 C.F.R. § 114.2(c).

3 The available information indicates that the funds expended by NCSF to retain counsel
4 were for the purpose of ensuring its own compliance with the Act and Internal Revenue Service
5 laws given its Section 501(c)(3) status. NCSF responded that it did not pay the firm retained by
6 Durant for any legal services provided to Durant or his committee, but rather hired its own
7 counsel to conduct minimal research to determine whether it could continue to compensate
8 Durant as its President while he was also a candidate. Joint Response at 2-3.

9 There is no available information indicating that Durant or the NCSF Board directed the
10 use of NCSF funds for legal advice to benefit Durant's candidacy. NCSF's use of funds for the
11 purpose of legal advice pertaining to Durant's candidacy and his continued affiliation with NCSF
12 appears to have been for the benefit of NCSF's own interests, and does not constitute the
13 making, receiving, or facilitating of a prohibited in-kind corporate contribution.

14 Accordingly, the Commission: 1) finds no reason to believe that New Common School
15 Foundation violated 2 U.S.C. § 441b(a) by making a prohibited in-kind corporate contribution, in
16 the form of legal services, to The American Way – Durant 2012 and Walter P. Czarnecki in his
17 official capacity as treasurer; and 2) finds no reason to believe that the New Common School
18 Foundation Board Members violated 11 C.F.R. § 114.2(f)(1) by facilitating the making of a
19 prohibited in-kind corporate contribution to the Committee in the form of legal services.

20

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6500

RESPONDENT: Cornerstone Schools Association

I. INTRODUCTION

This matter was generated by a complaint filed by the Bill Beddoes. *See*

2 U.S.C. § 437(g)(a)(1). The matter involves allegations that an incorporated non-profit educational institution, Cornerstone Schools Association ("CSA"), made prohibited in-kind contributions to The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer ("Committee"), the principal campaign committee for U.S. Senate candidate W. Clark Durant. Durant currently serves as the "Founding Chair" and a Board of Director member of CSA.

The complaints (original, amended, and second amended) allege that the CSA violated 2 U.S.C. § 441b by making prohibited in-kind corporate contributions to the Committee as a result of: 1) a CSA television advertisement promoting the school across the state; 2) an email sent by CSA's President and CEO, Ernestine Sanders to its "partners" and "friends" inviting them to attend a regularly scheduled meeting, during which Durant announced his candidacy; 3) the Committee's use of CSA's facility for announcing Durant's candidacy; and 4) the Committee's use of video materials from CSA's YouTube page in one of its campaign mailers.

Respondent was notified of the complaint and amendments and denies the allegations.

Respondent, however, did not address the allegation regarding the CSA television advertisement

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1 included in the original complaint but not included in the subsequently filed amended and second
2 amended complaints.

3 For the reasons discussed below, the Commission finds no reason to believe the
4 Respondent violated the Act.

5 **II. FACTUAL BACKGROUND**

6 CSA is a Michigan non-profit corporation that operates as a group of charter and
7 independent schools in Detroit. Joint Response at 2. Durant currently serves as its "Founding
8 Chair" and a Board of Director member. *Id.*

9 On September 9, 2011, CSA's President and CEO, Ernestine Sanders, sent an email
10 ("Sanders email") to its "partners and friends" inviting them to attend a regularly scheduled
11 quarterly "Partner Morning" meeting on September 23, 2011, during which Durant formally
12 announced his candidacy.¹ See Complaints. Complainant asserts that it is likely that the email
13 was distributed outside CSA's restricted class; and that the Sanders email constitutes a prohibited
14 endorsement of Durant's candidacy to the general public in violation of 11 C.F.R.

15 § 114.4(c)(6)(i) and (ii). Complainant also contends that, given Durant's current position at
16 CSA, there must have been coordination resulting in the making and accepting of a prohibited
17 in-kind corporate contribution in violation of 2 U.S.C. § 441b(a). *Id.* Respondent denies that
18 there was any endorsement or that the communication was coordinated with Durant or the
19 Committee. Joint Response at 3.

¹ CSA, in response, explains that an individual meets the definition of a "partner" when he/she donates at least \$2,500 per year to help underwrite a child's education for one year and is teamed with a student with whom they meet during the "Partner Mornings," which are conducted four times per year. *Id.* An individual who meets the definition of a "friend" is someone who contributes to CSA but not at the partner level. *Id.*

1 Complainant alleges further that CSA funded and aired an advertisement on a cable
2 television system serving Mackinac Island, Michigan, which is far outside of the Southeastern
3 Michigan area where CSA operates, on September 10, 2011. Without explaining the basis for its
4 conclusion or providing any details about the context, such as whether Durant is featured or even
5 mentioned, Complainant alleges the ad was intended to build goodwill for Durant's campaign.
6 Original Complaint at 2. The advertisement is not available for Commission review. The
7 subsequently filed amended and second amended complaints do not include this particular
8 allegation, and the Joint Response does not address this allegation. See Amended Complaint;
9 Second Amended Complaint.

10 On September 23, 2011, Durant appeared and announced his campaign for U.S. Senate
11 at CSA's regularly scheduled quarterly "Partner Morning" meeting. Complainant alleges that
12 Durant's appearance at the "Partner Morning" meeting was essentially a campaign event for
13 which neither Durant nor his Committee paid the usual and normal cost for the use of CSA's
14 facility as required by 11 C.F.R. § 114.4(c)(7)(i). Complainant contends that Durant's use of
15 CSA's facility, at no cost to the Committee, constitutes a prohibited in-kind corporate
16 contribution. However, the Committee paid \$800 for use of the facility and CSA stated this was
17 the usual and normal cost. Joint Response at 4-5.

18 On September 26, 2011, the Committee distributed a four page campaign mailer that
19 stated that Durant "formally announced his candidacy for United States Senate from the
20 Cornerstone Schools on Friday September 23." The mailer included a photograph of
21 "Cornerstone's kindergartners recit[ing] the U.S. Constitution." Second Amended Complaint at
22 3-4, Ex. E. Underneath the photograph is a link to the Committee's YouTube page that, when
23 accessed, directed the viewer to a video clip from 2008 of what appears to be the same CSA's

1 kindergartners reciting the U.S. Constitution.² *Id.* Complainant alleges that the Committee's use
2 of CSA's YouTube video in its campaign mailer constitutes a prohibited in-kind corporate
3 contribution because the video was funded with CSA's corporate resources, and the Committee
4 used the video without paying a fair market value. *Id.* The Complainant also asserts the use is a
5 potential violation of copyright laws. *Id.* Respondent denies that the Committee's use of
6 publicly available video footage resulted in a prohibited in-kind contribution. Joint Response at
7 5.

8 **III. LEGAL ANALYSIS**

9 The Act prohibits corporations from making contributions in connection with a federal
10 election.³ 2 U.S.C. § 441b(a). It also prohibits any candidate from knowingly accepting or
11 receiving any contribution from a corporation, or any officer or any director of a corporation
12 from consenting to any contribution by a corporation to a federal candidate. *Id.* Commission
13 regulations provide that any incorporated nonprofit educational institution exempt from federal
14 taxation under 26 U.S.C. § 501(c)(3), such as a school, college, or university, may make its
15 facilities available to any federal candidate or candidate's representatives in the ordinary course
16 of business and at the usual and normal charge. 11 C.F.R. § 114.4(c)(7)(i).

17 **A. CSA's "Partner Morning" Meeting Email**

18 The Sanders email advertising the announcement of Durant's candidacy was sent only
19 to those individuals who fell within the category of a "partner" or "friend" that would normally
20 be invited and attend CSA's regularly scheduled quarterly "Partner Morning" meeting. Further,

² This video is not available on the link provided on the mailer, <http://www.youtube.com/clarkdurant>. However, the video can be found at <http://www.youtube.com/watch?v=zzQwTym0Xi8>.

³ Contributions include any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate or campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2). In-kind contributions must be reported pursuant to 2 U.S.C. § 434(b). The corporate ban on contributions to federal candidates also includes in-kind contributions. 11 C.F.R. § 114.2(c).

1 it appears that Sanders alone was responsible for preparing the email without any coordination
2 with Durant or the Committee.⁴ See Joint Response at 3. There is no available information to
3 support a conclusion that there was any coordination between the parties as defined by
4 11 C.F.R. § 109.21.

5 The Act and the Commission regulations permit a corporation, such as CSA, to endorse a
6 candidate during a candidate appearance before its restricted class, except to the extent that such
7 activity is foreclosed by provisions of law other than the Act. See 11 C.F.R. § 114.2(a)(1) and
8 114.4(c)(6). The Supreme Court decision in *Citizens United*, 558 U.S. ___, 130 S. Ct. 876
9 (January 21, 2010), struck down the Act's prohibition on the use of corporate general treasury
10 funds to finance communications that expressly advocate for federal candidates.

11 Therefore, even if CSA had endorsed Durant in the Sanders email or during his
12 appearance before CSA's restricted class, such an endorsement is not prohibited.

13 Accordingly, the Commission: 1) finds no reason to believe that Cornerstone Schools
14 Association violated 2 U.S.C. § 441b(a) by coordinating the Sanders email in a manner that
15 would result in the making of a prohibited in-kind corporate contribution; and 2) finds no reason
16 to believe that Cornerstone Schools Association violated 11 C.F.R. § 114.4(c)(6)(i) and (ii) by
17 endorsing Durant's candidacy.

18 **B. CSA's Television Advertisement**

19 As stated previously, Complainant did not provide any detailed information regarding the
20 CSA advertisement and the Responses do not address this issue, presumably, because it was not

⁴ CSA states that it did not incur any costs to notify its "partners" and "friends" of the Durant's presence at "Partner Morning." *Id.* at 4. However, it estimates that the value of the time Sanders spent composing the email would total, at most, about \$85. *Id.* It further asserts that it viewed Durant's appearance in the context of an educational opportunity for the students as indicated by the full text of the email. *Id.* at 3-4.

1 included in the amended complaints. Notwithstanding the Complainant's allegations, there is no
2 available information to support the assertion that the CSA advertisement constituted a
3 contribution under the Act. Although Complainant asserts that the advertisement was aired in
4 order to promote Durant's candidacy, there is no allegation that the advertisement featured
5 Durant, expressly advocated for his election, was coordinated with the Committee or constituted
6 an electioneering communication. See 11 C.F.R. §§ 100.22, 100.29, and 109.21. In the absence
7 of any information that would suggest CSA or the Committee violated the Act with respect to the
8 television advertisement, the Commission finds no reason to believe that Cornerstone Schools
9 Association violated 2 U.S.C. § 441b(a) by making a prohibited in-kind corporate contribution to
10 The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer.

11 **C. Use of CSA's Corporate Facility for Candidacy Announcement**

12 The available information supports the Respondent's contention that CSA, as a non-profit
13 educational institution, was permitted to make its facilities available to Durant in the ordinary
14 course of business at the usual and normal cost and that it, in fact, paid the usual and normal cost,
15 totaling \$800, for the use of CSA's facilities in conjunction with Durant's appearance at the
16 "Partner Morning" meeting. Joint Response at 4; see also 11 C.F.R. § 114.4(c)(7)(i). Therefore,
17 the Commission finds no reason to believe that Cornerstone Schools Association made a
18 prohibited in-kind corporate contribution in violation of 2 U.S.C. § 441b(a).

19 **D. Use of CSA's YouTube Video**

20 The Commission has reviewed the Committee's campaign mailer which contains the
21 information as alleged in the complaint. Complaint at Ex. E. Although CSA does not make a
22 specific reference to the campaign mailer in its response, but rather refers to the videos being
23 placed on the Committee's website, the Commission concludes that the response appears to be

1 sufficient to cover the campaign mailer and YouTube video at issue. Joint Response at 5. The
2 CSA video is from 2008, well before Durant was a candidate. CSA states that the Committee
3 made its decision to post the publicly available video on its own website without consultation
4 with CSA. *Id.* The Commission concludes that the use of the publicly available information by
5 The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer,
6 from Cornerstone Schools Association’s YouTube page does not constitute a prohibited in-kind
7 corporate contribution.⁵ Accordingly, the Commission finds no reason to believe that the
8 Cornerstone Schools Association made a prohibited in-kind corporate contribution in violation of
9 2 U.S.C. § 441b(a) with the use of the publicly available YouTube video, in its campaign mailer,
10 by The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as
11 treasurer.

⁵ For purposes of this Report, the Commission does not reach any conclusion with respect to the copyright allegations since this issue does not fall within its jurisdiction.